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IN THE

**Supreme Court of the United States**

October Term, 1941

No. 1009

Office - Supreme Court, U. S.  
FILED  
MAR 4 1942  
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ADRIANO MERLANO BERSIA, CARLO NOVELLA,  
ERNESTO VIANI, GIUSEPPE PRATALONGO, GIU-  
SEPPE CARTA, ERNESTO BENEDETTI, SEVE-  
RINO ENRICO alias ENRICO SEVERINO, PLACIDO  
FRISONE, GIUSEPPE SICCARDI and ANGELO  
NAPOLI,

*Petitioners,*

AGAINST

UNITED STATES OF AMERICA,

*Respondent.*

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**PETITION FOR WRIT OF CERTIORARI AND  
SUPPORTING BRIEF**

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HOMER L. LOOMIS,  
*Counsel for Appellants.*

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## **INDEX.**

	PAGE
Petition for Writ of Certiorari.....	1-7
A.—Summary Statement of Matter Involved....	1-5
B.—Reasons Relied on for Allowance of Writ....	5-7
Brief in Support of Petition for Certiorari.....	8-101
A.—Introductory Statements.....	8-9
1.—Report of Opinion Below.....	8
2.—Jurisdiction .....	8
3.—Specifications of Error.....	9
B.—Argument .....	9-101
Summary of Argument.....	9-11
Point 1—The statute invoked was without application to the case presented.....	11-98
A.—The statute applies only to trespassers; not to vessel-owners or their authorized agents, the officers and crew.....	13-56
1.—The general terms of the statute must be construed in the light of those common-law principles applied to similar offenses at the common law.....	14-41
a.—In the case of offenses at common law similar to that denounced by the statute here under consideration, the possessor-owners of the property, injured or destroyed, were invariably excepted from liability for such injury or destruction..	18-20

*INDEX* (continued).

	PAGE
b.—Statutes making criminal offenses against specified property, no matter how general their terms, are, in keeping with the common-law rule, ever deemed impliedly to except, from their prohibitions, the owners of such property, unless expressly and affirmatively included.....	20-41
2.—The effect of a criminal statute must, as against an accused, be restrained to the unmistakable scope of the words actually used	41-49
a.—To restrict the scope of the term "tamper" to its ordinary meaning and signification, precludes the application of the statute to any but trespassers.....	43-49
3.—The statute must be read in connection with other statutes in pari materia.....	50-56
a.—The statute here in question, construed together with related statutes, can apply only to trespassers.....	51-56
(1).—Where one of two statutes or sections of a statute deals specially with a particular group of members in a given class, and the other with the class as a whole, the former is regularly treated as an exception to the latter.....	53-56
B.—The statute applies only to ships engaged in foreign commerce; not to ships laid up in our ports.....	56-70
1.—The words in the body of the statute contemplate vessels engaged in foreign commerce .....	57

*INDEX (continued).*

PAGE	
2.—The historical background of the statute suggests that it was aimed at the protection of ships engaged in carrying our foreign commerce .....	57-60
3.—The appropriate correlation of Titles II, III and IV of the Act shows Title III to have been aimed at the protection of vessels engaged in foreign commerce.....	60-62
4.—The title heading establishes that the statute applies only to ships engaged in foreign commerce .....	62-70
C.—The statute applies only to acts done with both the criminal intent to perpetrate a wrong and the intent to injure vessel-safety.....	71-97
1.—The statute required, as an essential element of the crime therein denounced, the general criminal intent to perpetrate a wrong .....	71-89
a.—Any other construction would lead to unpermissible absurdities.....	71-78
b.—The nature of the offense, created by the statute, and the seriousness of the penalty, provided for it, forbid that it should be construed a mere malum prohibitum.. .	79-81
c.—The provisions of the surrounding and similar sections, as well as the history of the legislation itself, show malice to be an essential element of the crime denounced .....	81-85

*INDEX (continued).*

	PAGE
d.—The Grand Jurors, who returned the indictment in this very case, regarded malice as an essential ingredient of the offense charged.....	85
e.—There was no showing of malice in the proofs .....	86-89
2.—The statute requires, as an essential element of the crime therein denounced, the specific intent to injure the safety of the vessel or of the cargo or lives aboard her..	89-98
Point II—The Indictment was insufficient.....	98-99
Point III—Evidence was wanting to sustain a conviction .....	99
Point IV—The statute, as applied, violates the Fifth Amendment of the Federal Constitution..	100-101
Point V—The writ of certiorari prayed for should be granted to the end that this Court may review and reverse the judgments entered below.....	101

## TABLE OF CASES.

	PAGE
<i>Arnold v. United States</i> (C. C. A., 8th Cir.), 115 F. (2d) 523, 527 .....	42, 45
<i>Arthur v. Morrison</i> , 96 U. S. 108, 112.....	33
<i>Bersia, et al., v. United States</i> , 124 F. (2) 310....	33, 77
<i>Bloss v. Tobey</i> , 2 Pick. (Mass.) 320, 324.....	19
<i>Brown v. Duchesne</i> , 19 How. (U. S.) 183, 194.....	50
<i>Brown v. The State</i> , 137 Wis. 543, 549.....	82
<i>Burco v. Whitworth</i> , 81 F. (2d) 721.....	100
<i>Charles River Bridge v. Warren Bridge</i> , 36 U. S. 420, 545 .....	17
<i>Chicago, R. I. &amp; P. Ry. Co. v. U. S.</i> , 284 U. S. 80, 97..	100
<i>Commonwealth v. Burford</i> , 225 Pa. 93.....	26
<i>Commonwealth v. Carson</i> , 166 Pa. 179, 183.....	82
<i>Commonwealth v. Goldman</i> , 205 Mass. 400.....	42
<i>Comm. v. Hartnett</i> , 69 Mass. (3 Gray) 450.....	28
<i>Commonwealth v. Shaffer</i> , 32 Pa. Superior Ct. 375, 379 .....	20, 26, 86
<i>Coosaw Mining Co. v. South Carolina</i> , 144 U. S. 550, 563	63
<i>Crane v. Reeder</i> , 22 Mich. 322, 334.....	54
<i>Daeche v. United States</i> (C. C. A., 2d Cir.), 250 Fed. 566 .....	34, 58, 60
<i>Davis v. Comm.</i> , 30 Pa. 421.....	98
<i>Dotson v. State</i> , 6 Cold. (Tenn.) 545.....	26, 87
<i>Dye v. Commonwealth</i> , 48 Va. (7 Gratt.) 662.....	26
<i>Fasulo v. United States</i> , 272 U. S. 620, 628.....	64, 69
<i>Felton v. United States</i> , 96 U. S. 699, 702.....	82
<i>Fisher v. Blight</i> , 6 U. S. (2 Cranch) 358, 390.....	35
<i>Goforth v. State</i> , 27 Tenn. (8 Humph.) 37.....	26
<i>Hargrove v. United States</i> , 67 F. (2d) 820, 823....	81, 82
<i>Holmes' Case (1634)</i> , Cro. Car. 376.....	19, 22
<i>Holy Trinity Church v. United States</i> , 143 U. S. 457..	62
<i>Keefe v. Donnell</i> , 92 Me. 151, 159, 42 A. 345.....	45

## TABLE OF CASES (continued).

	PAGE
<i>Lanzetta v. New Jersey</i> , 306 U. S. 451, 453.....	101
<i>Ledbetter v. United States</i> , 170 U. S. 606.....	99
<i>Lewis v. State</i> , 27 P. (2d) 363.....	26
<i>Long's Case</i> , Cro. Eliz. 490.....	98
<i>Loomis v. Edgerton</i> , 19 Wend. 419.....	19
<i>Martin v. Regina</i> , 3 N. & P. 472.....	24, 98,
<i>Masters v. United States</i> , 42 App. D. C. 350.....	15, 72
<i>Mayor, etc., of Bradford v. Pickles</i> (H. L.) (1895) A. C. 587 .....	87
<i>McBoyle v. United States</i> , 283 U. S. 25.....	42, 48
<i>Michigan Central R. R. v. Vreeland</i> , 227 U. S. 59....	15
<i>Moore v. United States</i> , 91 U. S. 270.....	15
<i>Murray v. Chicago &amp; N. W. Ry. Co.</i> , 62 Fed. 24 (aff'd 92 Fed. 868, C. C. A., 8th Cir.).....	16
<i>Northcot v. State</i> , 43 Ala. 330, 334.....	87
<i>Pieraccini et al. v. United States</i> , 124 F. (2) 310..67, 89,	92
<i>Potter v. United States</i> , 155 U. S. 438, 446.....	82
<i>Poulter's Case</i> .....	20
<i>Pretty v. Solly</i> , 26 Beavan 610.....	53
<i>Regina v. Carter</i> (1703), 2 Ld. Raym. 890.....	98
<i>Regina v. Langford, et al.</i> , Car. & M. 602.....	25
<i>Regina v. Martin</i> , 8 A. & E. 481.....	25
<i>Regina v. Moranda</i> , 11 S. W. S. C. R. 152.....	24
<i>Reg. v. Tolson</i> , L. R. 23, I. B. Div. 168.....	72
<i>Regina v. Ward</i> , 7 Cox 421.....	19, 98,
<i>Rex v. Austen</i> , Russ. & Ry. 490.....	99
<i>Rex v. Breeme</i> (1780), 1 Leach 220.....	86
<i>Rex v. Hean</i> , 1 Leach, 527.....	22
<i>Rex v. Knight</i> (1908), 1 Cr. App. Rep. 186, C. C. A..	87
<i>Rex v. Madox</i> , Russ. & Ry. 92.....	19
<i>Rex v. McGregor</i> , 3 Bos. & P. 106.....	27
<i>Rex v. Pedley</i> (1782), 1 Leach 242.....	24,
<i>Rex v. Patrick</i> , 2 East P. C. 1059.....	98
<i>Rex v. Spaulding</i> (1780), 1 Leach 218.....	26,
<i>Rex v. White</i> , 1 Leach 252.....	21
	19,
	98

## TABLE OF CASES (continued).

	PAGE
<i>Rex v. Shepherd</i> , 1 Leach 539.....	87
<i>Rickman's case</i> , 2 East P. C. 1034.....	98
<i>Rodgers v. United States</i> , 185 U. S. 83.....	54
<i>Roesel v. State</i> , 62 N. J. L. 216, 226.....	49
<i>Rosenberg v. State</i> , 164 Md. 473, 476-477.....	26
<i>Ross v. Jones</i> , 22 Wall. 576.....	14
<i>Schiaffino et al. v. United States</i> , 124 F. (2) 310.....	67
<i>Schreiber v. Sharpless</i> , 110 U. S. 76.....	15
<i>Shevelin-Carpenter Co. v. Minnesota</i> , 218 U. S. 57, 69, 70,	78
<i>Smith v. Cahoon</i> , 283 U. S. 553.....	101
<i>Smith v. State</i> , 111 P. (2d) 198.....	26
<i>Spurr v. United States</i> , 174 U. S. 728, 734.....	82
<i>Staaden v. People</i> , 82 Ill. 432.....	98
<i>State v. Brandt</i> , 14 Ia. 180.....	98
<i>State v. Click</i> , 115 Tenn. 283.....	98
<i>State v. Comm'r's of Railroad Taxation</i> , 37 N. J. Law 228 .....	54
<i>State v. Ferguson</i> , 91 S. C. 235, 243.....	88
<i>State v. Jackson</i> , 7 Ind. 270.....	98
<i>State v. Jones</i> , 129 N. C. 508.....	24
<i>State v. Landreth</i> , 2 Law. Rep. 446.....	19
<i>State v. Pierce</i> , 7 Ala. 728.....	98
<i>State v. Simpson</i> , 2 Hawks 460.....	19
<i>State v. Smith</i> , 119 Tenn. 521, 526-527.....	82
<i>State v. Smith</i> , 21 Tex. 748.....	98
<i>The State v. Robinson</i> , 3 Dev. & Bat. 130.....	18,
<i>The State v. Mason</i> , 13 Ire. 341.....	20, 22, 87,
<i>Tiger v. Western Improvement Co.</i> , 221 U. S. 286, 309 .....	38
<i>Todd v. United States</i> , 158 U. S. 278, 282.....	42
<i>United States v. Babbitt</i> , 66 U. S. 55, 60.....	50
<i>United States v. Balint</i> , 258 U. S. 250.....	78
<i>U. S. v. Cardish</i> , 145 Fed. 242, 248 (E. D. Wis.),	
	15, 21, 26, 98

## TABLE OF CASES (continued).

	PAGE
<i>United States v. Carll</i> , 105 U. S. 611.....	15, 99
<i>United States v. Chase</i> , 135 U. S. 255.....	53, 64
<i>United States v. Cohen Grocery Co.</i> , 255 U. S. 81....	101
<i>United States v. Cohen</i> (C. C. A., 3rd Cir.), 274 Fed. 596	19
<i>United States v. Fisher</i> , 2 Cr. 358, 386, 390.....	35, 62
<i>United States v. Freeman</i> , 44 U. S. [3 How.] 556, 564-565 .....	37
<i>United States v. Hansee</i> , 79 Fed. 303.....	32
<i>United States v. Harris</i> , 177 U. S. 305.....	42
<i>United States v. Hess</i> , 124 U. S. 483.....	99
<i>United States v. Houghton</i> , 14 Fed. 544, 549.....	72
<i>United States v. Katz</i> , 271 U. S. 354, 357.....	62, 77
<i>United States v. Martini</i> (D. C. S. D., Ala.), 42 F. Supp. 502 .....	52, 63, 65, 84, 89, 91,
<i>United States v. McArdle</i> (D. C. Or.), 2 Sawy. 367, 26 Fed. Cas. 1042, Case No. 15,653.....	99, 55
<i>United States v. Murdock</i> , 290 U. S. 389, 394.....	81
<i>United States v. Murphy</i> , 50 F. (2d) 455.....	32
<i>United States v. Palmer</i> , 3 Wheat. 610, 631.....	62
<i>United States v. Resnick</i> , 299 U. S. 207.....	41
<i>United States v. Saglietto, et al.</i> (D. C. E. D.), 41 F. Supp. 21, 29.....	52, 63, 65, 76, 89,
<i>United States v. Thomas</i> , 82 U. S. (15 Wall.) 337, 345..	99, 15
<i>United States v. Tomicich</i> (D. C. E. D., Pa.), 41 F. Supp. 33 .....	63,
<i>United States v. Van Ranst</i> , 3 Wash. C. C. 146, 28 Fed. Cas. 360, Case No. 16,608.....	75, 30,
<i>United States v. Weitzel</i> , 246 U. S. 533.....	42
<i>Wierse v. United States</i> (C. C. A., 4th Cir.), 252 Fed. 435, 441 .....	34, 59,
<i>Woodward v. State</i> (Ct. of Cr. App. Tex.), 28 S. W. 204 .....	60, 98
<i>Wright v. Vinton Branch</i> , 300 U. S. 440, 463.....	36
10 Edw. 4, pl. 14.....	20
3 Hen. 7, pl. 10 .....	20
10 Hen. 7, pl. 1 .....	20

**TABLE OF STATUTES.**

	<b>PAGE</b>
18 U. S. C. A., sec. 502, 9, 11, 12, 13, 32, 33, 34, 40, 41, 51, 55, 56, 58, 77, 79, 87,	88
18 U. S. C. A., sec. 409.....	28
18 U. S. C. A., sec. 464.....	21, 26
18 U. S. C. A., sec. 465.....	27
Espionage Act, Title III.....	40
Sabotage Act of April 20, 1918, c. 59, 40 Stat. 533, 50 U. S. C. A., 101-103.....	13, 37, 38, 39, 40, 41
Laws of N. C., 1846-47, c. 70.....	22
9 Geo. I, c. 22 .....	21, 22
7 and 8 Geo. IV, c. 29.....	24, 25
7 and 8 Geo. IV, c. 8.....	25
12 Anne, c. 7 .....	27
24 Geo. II, c. 45 .....	27
9 A. L. M. C. 266, sec. 21.....	28
18 U. S. C. A., sec. 491.....	29, 32
Act of March 26, 1804, c. 40, 2 Stat. 290.....	29, 30, 31, 32
Act of February 13, 1925, 43 Stat. 938, 28 U. S. C. A., sec. 347 .....	8
Act of June 15, 1917, Title II, sec. 3; 40 Stat. 220, 10, 11, 33, 66, 77, 85	
Act of June 15, 1917, Title III, 40 Stat. 221, 18 U. S. C. A., sec. 502.....	9, 11, 13, 32, 33, 34, 40, 41, 51, 55, 56, 58, 77, 79, 87, 88
Act of June 15, 1917, Title IV.....	11, 14, 36, 82, 83, 84

*TABLE OF STATUTES* (continued).

	PAGE
Narcotic Act of Dec. 17, 1914, c. 1; 38 Stat. 785.....	78
50 U. S. C. A., sec. 193.....34, 51, 55, 56, 59, 81,	88
Act of July 12, 1876, 19 Stat. 90, c. 186.....	53
National Motor Vehicle Theft Act.....	42
Navy Personnel Act of Mar. 3, 1899, c. 413, sec. 13....	54
Act of June 7, 1872, c. 322, sec. 51, 17 Stat. 273-274..10,	55
46 U. S. C. A., sec. 701, subd. 7.....10,	56
Code of N. C., 1939, sec. 4325.....	47
New York Penal Code, subd. 15.....	46
Ohio Gen. Code, secs. 12,508, 12,512 and 12,512-1....	47
Title 18, Pa. St. Ann., secs. 3,371, 3,373.....	47
Texas Penal Code, Title 17, sec. 1344.....	48
Gen. Laws of Minnesota, 1895, c. 163, sec. 7.....	78
Col. Stat. Ann. (1935), c. 48, sec. 393.....	48
Penal Code of California (1941), Part 1, Tit. 14, sec. 625a .....	48
Gen. Laws of Rhode Island (1938), c. 608, sec. 57....	48
Act of March 26, 1804, c. 40 (2 Stat. 290).....29,	32
Laws of Washington, 1909, sec. 407, p. 1019.....	46

*TABLE OF STATUTES* (continued).

	PAGE
Remington's Rev. St. of Washington, Vol. IV, Title XIV, sec. 2659 .....	46
Comp. Gen. Laws of Florida, Fifth Div., Part I, Tit. II, c. IV, art. 14, sec. 7428.....	47
Title 28, Mich. St. Ann., sec. 26,648.....	47
Kansas Gen. Stat. (1935), c. 21, Art. 5, sec. 580.....	48
New Jersey Stat. Ann., Title 2, c. 162, sec. 1.....	48
West Virginia Code of 1937, sec. 5986.....	48

*TABLE OF COMMENTARIES.*

1 Bishop's Criminal Law (9th ed.) 195.....	16
Britton .....	20
Braeton .....	20
Book Assize, The.....	20
Wharton's Criminal Law, Vol. 1, p. 385 (12th ed.)....	17
4 Bl. Comm. (Cooley's ed.) 243.....	18
1 Hawkins' Pleas of the Crown, c. 24.....	19
2 East's Pleas of the Crown, c. 22, 644, 1024, 1072, 19, 20, 27, 86	
3 Greenleaf on Evidence (16th ed.) 217.....	19

*TABLE OF COMMENTARIES* (continued).

	PAGE
1 Bishop's Criminal Law (9th ed.) 377.....	20
Report of Committee on Judiciary on H. R. 291, as contained in Report No. 30, 65th Congress, first session, in House Reports, Vol. I.....	93
Congressional Record, 65th Congress, 1st Session, Vol. 55, Part 4, page 3306.....	59, 62, 83,
1 Bishop's Criminal Law (9th ed.) 287.....	71
"Public Welfare Offenses" by Francis Bowes Sayre, 33 Col. L. Rev. (1933) 55. 83.....	79
55 Cong. Rec. 1720, cols. 1-2.....	36,
Federal Register, July 2, 1940, p. 2442.....	66
Bacon's Abridgment, tit. Statutes 1, 4.....	15
Cong. Rec., Vol. 56, Part 3, p. 3112.....	39
Cong. Rec., 64th Cong., 2d sess., vol. 54, pt. 4, p. 3422..	84
Milton's Paradise Lost, Book I, line 98.....	94
Shakespeare's Cymbeline, Act. II, Scene IV, line 102...	94
Webster's New International Unabridged Dictionary (2d ed.) .....	43,
New Standard Dictionary, The, (1924 ed.) .....	43,
	45

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ADRIANO MERLANO BERSIA, CARLO NOVELLA, ERNESTO VIANI,  
GIUSEPPE PRATALONGO, GIUSEPPE CARTA, ERNESTO BENE-  
DETTI, SEVERINO ENRICO alias ENRICO SEVERINO, PLACIDO  
FRISONE, GIUSEPPE SICCARDI and ANGELO NAPOLI,

*Petitioners,*

against

UNITED STATES OF AMERICA,

*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI.**

To the Honorable, the Chief Justice and the Associate Justices of the United States Supreme Court:

The petition of Adriano Merlano Bersia, Carlo Novella, Ernesto Viani, Giuseppe Pratalongo, Giuseppe Carta, Ernesto Benedetti, Severino Enrico alias Enrico Severino, Placido Frisone, Giuseppe Siccardi and Angelo Napoli respectfully alleges and propounds as follows:

**A.**

**Summary Statement of Matter Involved.**

**1.**

Your petitioners are mariners, to wit, respectively, the master, the chief engineer, the second engineer and various seamen of the motorship Villarperosa, who were,—until seized, removed from their vessel and confined, on the 30th day of March, 1941, as hereinafter narrated,—attached to and living aboard that vessel, with the other members of her crew; the said steamer Villarperosa then being of Italian register, flying the Italian flag and laid up at dead anchor-

age in the Port of Wilmington, North Carolina, for the duration of the war between Italy and Great Britain.

## 2.

Your petitioners were indicted, tried and convicted, after trial by jury, in the United States District Court for the Eastern District of North Carolina on the charge of *tampering* with the motive power and navigational appliances of their said steamer while she was at dead anchorage as aforesaid in the month of March, 1941, and your petitioners have been sentenced to imprisonment in a federal penitentiary for terms of three years in the cases of Adriano Merlano Bersia, the Master, and Carlo Novella, Chief Engineer, and terms of one year and six months in the case of the other petitioners.

## 3.

The proofs showed that your petitioners, in doing what they did, were acting pursuant to the orders both of the owner of the vessel and the Italian naval authorities; failed to show that they were acting for any purpose other than to place their vessel in such a condition that, if she should fall into the hands of their country's enemy, she could not be beneficially used by that enemy for a long time to come and, then, only after the execution of extensive repairs at great expense; and failed to show that your petitioners knew of, or intended to violate, any law of the United States prohibiting their doing what they respectively did.

The proofs further show that, shortly following the dismantling of the said machinery in the engine room of their said steamer, your petitioners were forcibly removed from their steamer by United States Coast Guard officers on or about the thirtieth day of March, 1941, and have been kept in confinement ever since.

## 4.

Your petitioners appealed from the said judgments of conviction and imprisonment to the United States Cir-

cuit Court of Appeals for the Fourth Circuit, which, however, on December 26, 1941, entered a judgment affirming the judgments entered below, and on January 31, 1942, denied your petitioners' timely application for a rehearing.

## 5.

Petitioners feel aggrieved and complain of the proceedings had below for the following reasons:

## a.

The application to the petitioners of Title 3 of the Act of June 15, 1917, c. 30, Title III, 40 Stat. 221, (18 U. S. C. A. Sec. 502), though what they did was done:

- (1) With the consent and approval,—and at the instance of, the owner of their vessel;
- (2) Without involving any trespass on or wrong to, the person or property of another;
- (3) To the machinery of a laid-up ship not engaged in foreign commerce;
- (4) Without any criminal intent; and
- (5) Without any intent to imperil or undermine the safety of their steamer.

(Assignments of Error 4th, pr. rec. 72-73; 5th, 75; 7th, 75; 8th and 9th, 76; 10th and 11th, 76-77; 12th and 13th, 77-78; 14th, 79; 16th, 79-80; 17th and 18th, 80-81; 19th and 20th, 81; 22nd, 82-84; and 23rd, 84).\*

## b.

The failure of the Circuit Court of Appeals to hold that the petitioners' demurrer to the indictment, as charging no crime punishable under the laws of the United States, should have been sustained and the judgments reversed because:

- (1) The indictment failed to allege the possessor-ownership of the vessel to be in someone other than

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\*These and similar notations refer to the pages of the printed record filed with this petition.

the petitioners or those at whose instance they acted;

(2) The indictment failed to allege that the vessels were engaged in foreign commerce; and

(3) The indictment depended for its validity upon a construction of the statute, that, if permissible, rendered the statute unconstitutional.

(Assignments of Error, 1st and 2nd, pr. rec. 65, 66-69; 22nd, 82-84; and 23rd, 84).

c.

The failure of the Circuit Court of Appeals to hold that the trial judge should have directed a verdict of "not guilty" on the evidence, as being insufficient to warrant a verdict of guilty against these petitioners, and to reverse the judgments below accordingly because:

(1) The proofs did not reasonably tend to show that the acts complained of involved a trespass by petitioners upon the property of others or were done without the owner's cognizance, consent and approval;

(2) The proofs did not reasonably tend to show the vessel to have been engaged in foreign commerce;

(3) The proofs did not reasonably tend to show the acts complained of to have been accompanied by any malice or criminal intent as charged in the indictment; and

(4) The proofs did not reasonably tend to show that the acts complained of were done with an intent to injure or endanger the *safety* of the vessel within the language of the statute.

(Assignments of Error, 4th pr. rec., 72-75; 5th, 75; 8th and 9th, 76; 10th and 11th, 76-77; 14th, 79; 18th, 80; 19th, 81; and 23rd, 84).

d.

The denial of petitioners' right to have the jury instructed:

(1) That the statute had no application to the

petitioners' acts, if those acts were done with the cognizance, consent and approval of the owner of the Villarperosa;

(2) That the statute had no application to the petitioners' acts, unless the vessel was engaged in foreign commerce;

(3) That before the petitioners could be found guilty the jury were required to be satisfied beyond a reasonable doubt that, in doing what they did, they were acting with a purpose to commit a wrong against some other person or his property or knew of the statute and intended to violate it.

(Assignments of Error, 7th, pr. rec. 75; 8th, 9th and 10th, 76-77; 11th, 12th and 13th, 77-78; 14th, 79; 16th, 17th and 18th, 79-80; 19th and 20th, 81; and 23rd, 84).

e.

The denial of the petitioners' right to have the judgment of the trial court arrested pursuant to the motion therefor seasonably made by the petitioners for the errors committed as hereinbefore noted.

(Assignments of Error, 22nd, pr. rec. 82-84; and 23rd, 84).

**B.**

**Reasons Relied on for Allowance of Writ.**

The reasons relied on by your petitioners for an allowance of the writ herein prayed for are that the Circuit Court of Appeals for the Fourth Circuit has:

1. Rendered a decision in conflict with the Fifth Amendment to the Constitution of the United States and the general current of authority in other Anglo-Saxon jurisdictions;

2. Decided important questions of general law in a way untenable and in conflict with the general current of authority;

3. Decided important questions of federal law that have not been but should be settled by this Court;
4. Decided federal questions in a way that conflicts with the Fifth amendment to the Constitution of the United States, the applicable decisions of this Court and the judicial history of federal statutes *in pari materia*; and
5. So far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by the United States District Court for the Eastern District of North Carolina, as to call for the exercise of this Court's power of supervision.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Fourth Circuit should be granted.

ADRIANO MERLANO BERSIA,

CARLO NOVELLA,

ERNESTO VIANI,

GIUSEPPE PRATALONGO,

GIUSEPPE CARTA,

ERNESTO BENEDETTI,

SEVERINO ENRICO,

PLACIDO FRISONE,

GIUSEPPE SICCARDI,

ANGELO NAPOLI.

**State of Florida,  
County of Leon.**

Adriano Merlano Bersia, Carlo Novella, Ernesto Viani, Giuseppe Pratalongo, Giuseppe Carta, Ernesto Benedetti, Severino Enrico alias Enrico Severino, Placida Frisone, Giuseppe Siccaldi and Angelo Napoli, being duly sworn, depose and say respectively that they are familiar with the contents of the foregoing petition and that the same is true to the best of their knowledge, information and belief.

**ADRIANO MERLANO BERSIA,  
CARLO NOVELLA,  
ERNESTO VIANI,  
GIUSEPPE PRATALONGO,  
GIUSEPPE CARTA,  
ERNESTO BENEDETTI,  
SEVERINO ENRICO,  
PLACIDO FRISONE,  
GIUSEPPE SICCARDI,  
ANGELO NAPOLI.**

Subscribed and sworn to  
before me this ~~and~~ day of March, 1942.

**T. M. DEAN,**  
Notary Public,  
State of Florida at large.  
My commission expires October 2nd, 1945.  
Bonded by the American Surety Co.

I certify that I have read the foregoing petition and that it sets forth in my opinion a proper case for the granting of a writ of certiorari and is not filed for purpose of delay.

**HOMER L. LOOMIS,**  
*Counsel for Petitioners.*